



Economic Impact Analysis Virginia Department of Planning and Budget

6 VAC 20-230 – Regulations Relating to the Special Conservator of the Peace

Department of Criminal Justice Services

May 14, 2004

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.G of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007.G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the Proposed Regulation

Chapter 922 of the 2003 Acts of Assembly gives the Department of Criminal Justice Services (DCJS) the authority to adopt regulations relating to special conservators of the peace, including establishing qualifications for registration as a special conservator of the peace, examining the suitability of each applicant for registration, ensuring continuing competency and preventing deceptive or misleading practices by registered special conservators of the peace, providing for the receipt of complaints relating to the conduct of registered special conservators of the peace and, if warranted, for investigations and disciplinary action, allowing for the revocation, suspension, or refusal to renew an existing registration under certain circumstances, and administering the regulatory program. The Act of Assembly also allows DCJS to charge fees for registration and renewal of registration that cover the program's administrative and operational costs.

The proposed regulation establishes (i) minimum eligibility requirements, including entry-level and in-service training requirements, for all applicants for initial registration or renewal of registration, (ii) application procedures for initial registration and for the renewal or reinstatement of an existing registration, (iii) administrative requirements and standards of conduct for individual registered as special conservators of the peace, (iv) reasons for registration denial, suspension, revocation, or probation, (v) procedures for the receipt and handling of complaints against any registered special conservator of the peace, and (vi) fees to be charged for initial registration, renewal or reinstatement of an existing registration, fingerprint card processing, training exemption, and replacement photo identification letter.

The proposed regulation was adopted as an emergency regulation in 2003.

Estimated Economic Impact

Rationale:

Chapter 922 of the 2003 Acts of Assembly gives the DCJS the authority to adopt regulations relating to special conservators of the peace. Special conservators of the peace are appointed by circuit courts and have law enforcement powers in the geographic area specified in their appointment. For example, special conservators of the peace have the authority to issue traffic summons and parking citations, to obtain and serve warrants for felonies and misdemeanors, and to make arrests within the geographic area specified by the circuit court. Conservators of the peace can be found across the state serving in various capacities, including as campus police officers, bank security officials, public works officers, and building code officials.

However, prior to the adoption of the emergency regulation in December 2003, the only requirements for appointment as a special conservator of the peace were a maximum length of appointment of four years and a \$1,000 bond to be filed by the applicant with the circuit court. The appointment was contingent on the individual's continued employment. Unlike police officers and private security service personnel (who are required to meet training and continuing competency requirements), special conservators of the peace were not required to meet any eligibility or training requirements. The circuit courts could require background checks of individuals applying to be special conservators of the peace, but these checks were not mandatory.

In 2002, the General Assembly directed the Virginia State Crime Commission to study the appointment process for special conservators of the peace. Specifically, the Virginia State Crime Commission was to analyze (i) the rationale for current special conservator of the peace appointments, (ii) the training needs of special conservator of the peace appointees, (iii) proper search and seizure techniques, (iv) the proper manner of executing arrests, and (v) personal safety concerns and issues associated with the exercising of special conservator of the peace powers.

The 2003 Virginia State Crime Commission report¹ analyzed 2,848 court orders for appointments with conservator of the peace powers in effect during FY 1999, FY 2000, and FY 2001 and found that circuit courts were not uniformly applying existing requirements in the Code of Virginia for these appointments. For instance, analysis of the data showed that

- 88% of the orders did not have the social security number of the appointee
- 17% of the orders did not address the duration of the appointment
- 11% of the orders exceeded the Code of Virginia-required four-year maximum duration of employment
- 63% did not specify that the duration of employment and the use of conservator powers was contingent on the individual's continued employment
- 71% did not address the bond requirement mandated by the Code of Virginia
- 9% of orders requiring a bond set the amount at less than \$1,000

The report also found that there was a potential for thousands of individuals to have law enforcement powers, including the authorization to carry firearms as part of their appointment, without any training, qualifications, or liability coverage. A 1996 Virginia State Crime Commission study² on specially appointed police officers also noted that the lack of a training requirement for conservators of the peace created a potential for the misuse of power. In addition to the potential for misuse, the 2003 report also found that, in many instances, law enforcement agencies were not even aware of individuals authorized with conservator of the

¹ "Special Conservators of the Peace and Special Police", Senate Document No. 12, Report of the Virginia State Crime Commission to the Governor and General Assembly of Virginia, 2003.

² "Study of Specially Appointed Police Officers", House Document No. 39, Final Report of the Virginia State Crime Commission to the Governor and General Assembly of Virginia, 1996.

peace powers in their jurisdiction. This led to cases of abuse with individuals making arrests using conservator of the peace powers when not authorized to do so. In one instance, an individual acting as the conservator of the peace made an arrest, then bonded out that person acting as a bail bondsman. It was later determined that the individual did not have an appointment as conservator of the peace and, hence, had no arrest powers.

One of the recommendations of the 2003 Virginia State Crime Commission report was that DCJS regulate, certify, and register conservators of the peace as they do private security officers. The report recommended that any regulations so formulated include fingerprint-based background checks, a bond or liability insurance requirement, and training standards. The report recommended repealing all appointments with conservator of the peace powers effective January 1, 2004 and requiring all applicants to present the circuit court with a valid DCJS registration prior to appointment as a conservator of the peace. Following the report, Chapter 922 of the 2003 Acts of Assembly was enacted and DCJS was given the authority to promulgate regulations regarding special conservators of the peace.

Description:

The proposed regulation establishes minimum eligibility requirements for individuals seeking appointment as special conservators of the peace. All applicants are required to be at least 18 years old and a U.S. citizen or U.S. legal resident alien. In addition, all applicants are required to meet minimum training requirements specified in the regulation. Armed special conservators of the peace are required to have at least 40 hours of entry-level training, including firearms training, and unarmed special conservators of the peace are required to have at least 24 hours of entry-level training. The proposed regulation also establishes minimum eligibility requirements for individuals seeking to renew their registration. Applicants are required to be in good standing in every jurisdiction where appointment is granted and are required to have at least eight hours of in-service training. In addition to the eight-hour in-service training requirement, armed conservators of the peace are required to undergo firearms re-qualification (a minimum two hours of training, excluding range qualification) on an annual basis.

The areas to be covered by the training and the time to be spent on each area are specified in the regulation. The minimum hours of entry-level training are specified in the Code of Virginia. The number of hours of in-service training and the course content (for entry-level and

in-service training) was determined by a committee put together by DCJS, consisting of police officers, training school instructors, and private security personnel. The regulation provides for exemptions from the entry-level and in-service training requirements under certain circumstances. For example, individuals employed as law enforcement officers for more than five continuous years prior to the applying for registration and who have not been terminated from employment as a law enforcement officer due to misconduct or incompetence are eligible for a partial exemption from entry-level training requirements. Individuals applying for a training exemption are required to submit a non-refundable \$25 fee to DCJS.

The proposed regulation also specifies the application procedures and requirements for initial registration and for the renewal or reinstatement of an existing registration.

- Initial registration requires applicants to submit a completed application form, a finger print card (along with a finger print processing application, a \$50 non-refundable fee, and a form listing the applicants criminal conviction history), a drug and alcohol test, a \$10,000 surety or cash bond, a \$60 non-refundable application fee, and documentation verifying the completion of required entry-level training. Successful applicants are issued a temporary registration letter by DCJS, which they can then present to the circuit court in the jurisdiction where the appointment is being sought. A final registration letter is issued by DCJS once the applicant submits a copy of the court order granting the appointment as a special conservator of the peace to the agency. On submitting the final registration letter to the Department of Motor Vehicle or other specified entity, a photo identification card is issued. Issuance of a replacement photo identification letter requires the submission of a completed application and a \$25 non-refundable fee. Registration remains valid for 12 months.
- Renewal of an existing regulation requires applicants to submit a completed renewal application, a non-refundable renewal fee of \$60, and a copy of the court order granting special conservator of the peace authority. The renewal application is to be made at least 30 days prior to registration expiration. On meeting the renewal requirements, DCJS issues a registration letter, valid for one year. On submitting the registration letter to the Department of Motor Vehicle or other specified entity, a photo identification card is issued. Issuance of a replacement photo identification

letter requires the submission of a completed application and a \$25 non-refundable fee. The regulation allows for extensions to the renewal period under certain circumstances.

- Following registration expiration, individuals seeking to continue their appointment as a special conservator of the peace are required to apply for reinstatement. Reinstatement requires applicants to meet all renewal requirements and submit a \$90 non-refundable reinstatement fee. Reinstatement is possible for up to 60 days following expiration. After the 60-day period has elapsed, applicants are required to meet all initial registration requirements. Individuals are not allowed to work as special conservators of the peace until they have been reinstated. Reinstatement is not possible in instances when individual has not maintained the required insurance or surety bond coverage.

All registrations are contingent upon a valid court order from the circuit court granting special conservator of the peace powers to the individual.

The proposed regulation also establishes administrative requirements and standards of conduct for individuals registered as special conservators of the peace. These requirements are similar to administrative requirements and standards of conduct for private security officers. The administrative requirements include keeping contact information up-to-date with DCJS, reporting any felony or misdemeanor convictions or violations of conservator of the peace statutes and regulations, and informing DCJS of any incident while on duty during which a firearm was discharged. The standards of conduct include carrying valid registration at all times while on duty, using minimum force necessary to make an arrest, and carrying a concealed firearm only on the expressed authorization of the circuit court. In addition, the proposed regulation establishes reasons for registration denial, suspension, revocation, or probation. These include failure of the drug and alcohol test and conviction of certain types of misdemeanors. Finally, the proposed regulation establishes procedures for the receipt and handling of complaints against any registered special conservator of the peace, including processes for the submission of complaints, the initiation of departmental investigations, and the appeal of any decision taken by DCJS.

Estimated Economic Impact:

The proposed regulation is likely to impose additional costs on individuals seeking appointment as special conservators of the peace. These individuals will now be required to meet entry-level training requirements, a minimum of 40 hours of training for armed special conservators of the peace and 24 hours of training for unarmed special conservators of the peace. According to DCJS, training costs an average of \$50 to \$70 a day. Thus, entry-level training will cost between \$250 and \$350 for armed conservators of the peace and between \$100 and \$140 for unarmed conservators of the peace. In addition to the training requirement, applicants are also required to submit a \$60 non-refundable application fee to DCJS. They are also required to undergo a criminal background check and a drug and alcohol test. DCJS charges a \$50 non-refundable fee for processing finger print cards and conducting criminal background checks. According to DCJS, the drug and alcohol test currently costs \$41.50. Applicants are also required to furnish a \$10,000 surety or cash bond. The cost of providing the bond will vary depending on the risk profile of the applicant.

Thus, applicants for initial registration will incur costs between \$401 and \$501 for registration as armed conservators of the peace and between \$251 and \$291 for registration as unarmed conservators of the peace. In addition, applicants will also incur the cost of furnishing the \$10,000 bond.

Individuals registered as special conservators of the peace will be required to renew their registration every 12 months if they wish to continue their appointment as special conservators of the peace. Renewal requires eight hours of training for armed and unarmed special conservators of the peace. In addition, armed special conservators of the peace are required to have a minimum of two hours of firearms training (excluding range qualification). The in-service training requirements will cost between \$62 and \$87 for armed special conservators of the peace (not including time spent on range qualification) and between \$50 and \$70 for unarmed special conservators of the peace. In addition, applicants will be required to pay a \$60 non-refundable renewal fee.

Thus, applicants for registration renewal will incur costs between \$122 and \$147 for renewal of their registration as armed conservators of the peace and between \$110 and \$130 for renewal of their registration as unarmed conservators of the peace.

The proposed change is also likely to produce economic benefits. The activities of special conservators of the peace have the potential to create a hazard to public safety through the false representation and abuse of special conservator of the peace powers. These individuals have law enforcement powers, including issuing traffic summons and parking citations, obtaining and serving warrants, and making arrests within the area of their authority. Some examples of the potential hazards to public safety posed by these individuals include wrongful arrests, illegal searches and seizures, and injuries or fatalities in custody. As noted above, there have been instances of individuals abusing these powers or using them without authorization. The proposed regulation is intended to prevent such abuses in the future and, hence, reduce the risk to the public from the activities of these individuals. To the extent that the proposed regulation achieves this purpose, it is likely to produce economic benefits.

The net economic impact of the proposed change will depend on whether the requirements of the proposed regulation are commensurate with the risk posed to public safety by the activities of special conservators of the peace. If the requirements are the minimum necessary to protect the public from the misuse and abuse of special conservator of the peace powers, the proposed regulation is likely to produce a net positive economic impact. The additional cost of registration to individuals seeking special conservator of the peace powers can be viewed as part of the compliance cost incurred by these individuals to ensure that they do not jeopardize public safety. By ensuring that individuals with special conservator of the peace powers pay the compliance costs associated with operating in a manner protective of public safety, the proposed regulation is likely to lead to a more efficient allocation of resources and have a net positive economic impact. If, on the other hand, the requirements are excessive given the risks posed to public safety from the activities of special conservators of the peace, the proposed regulation, by imposing unnecessary requirements, is likely to lead to a waste of resources and have a net negative economic impact.

As noted in previous sections, there have been several reported cases of misrepresentation and abuse relating to the exercise of special conservator of the peace powers. Due to the lack of a statewide database, it is not possible to know all such instances of misrepresentation and abuse. However, the potential for misuse of power and the risk to public safety appears to be significant. For example, armed special conservators of the peace are authorized to carry firearms but are not currently required to have any firearms-related training.

Moreover, the requirements of the proposed regulation appear to be reasonable and consistent with the requirements for getting certified as a private security officer. The entry-level and in-service training requirements are less than that required for a police officer (who has broader authority than a special conservator of the peace) and more than that required for a private security officer (who has more limited law enforcement powers than a special conservator of the peace). The only significant requirement for special conservators of the peace, which is not required for police officers or private security personnel, is the drug and alcohol testing requirement. While it is unclear whether this requirement is necessary to public safety, it is required under the Code of Virginia. However, overall, the requirements of the proposed regulation appear to be reasonable and in line with the risk posed by the activities of special conservators of the peace to public safety.

Assuming DCJS receives 2,500 applications, the agency estimates that it would require 4,160 investigative hours and 2,080 administrative hours per year or three full-time positions (one investigator position, one administrative position, and one support staff) at an annual cost of \$152,000 to run the program. At an average hourly wage of \$24.36 and an average of 2.50 hours spent on each application, it would cost DCJS on average a little under \$61 to review an application. Thus, the \$60 registration and registration renewal appears appropriate. At these fees, individuals seeking to be appointed as special conservators of the peace will be covering the compliance costs associated with operating in a manner protective of public safety. The \$50 non-refundable fee for processing finger print cards is identical to the finger print card processing fee charged under the private security services regulation and is intended to cover administrative and other costs incurred by DCJS in conducting a background check.

Businesses and Entities Affected

The proposed regulation will affect all individuals seeking special conservator of the peace appointments. These individuals will be required to register with DCJS prior to their appointment as a special conservator of the peace.

DCJS has received 110 applications for registration since January 1, 2004. Based on the Virginia State Crime Commission's report, DCJS expected to receive up to 2,500 applications for registration. However, the agency now believes this estimate to be too high and expects to receive anywhere up to 2,000 applications.

Localities Particularly Affected

The proposed regulation affects all localities in the Commonwealth. The 2003 Virginia State Crime Commission report noted that 53% of all appointments with special conservator of the peace powers during FY 1999, FY 2000, and FY 2001 came from two cities, Newport News and Norfolk. Localities such as these, with a large number of special conservator of the peace appointments, are likely to be the most affected.

Projected Impact on Employment

The proposed regulation could have a negative impact on the number of individuals operating as special conservators of the peace. Individuals seeking these appointments will now be required to register with DCJS and meet all the requirements of the proposed regulation prior to being appointed as a special conservator of the peace.

Effects on the Use and Value of Private Property

While businesses requiring the services of a special conservator of the peace may now find it more difficult to have one appointed (as any individual appointed as a special conservator of the peace would need to meet the requirements of this regulation and be registered with DCJS prior to the appointment), by ensuring that individuals appointed as special conservators of the peace are trained and qualified to do the job effectively the proposed regulation is likely to have a net positive impact on the use and value of private property.